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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 TINA T. TRAN) CASE NO.: C 10-00528 JF
13 Plaintiff,)
14 vs.)
15 METROCITIES MORTGAGE LLC;) PLAINTIFF'S NOTICE OF MOTION AND
16 MORTGAGE ELECTRONIC) MOTION TO REMAND AND REQUEST
17 REGISTRATION SYSTEMS, INC.; JP) FOR AN AWARD OF ATTORNEY'S FEES
18 MORGAN CHASE BANK, N.A.; ATLAS) AND COSTS
19 FINANCIAL SERVICES; GMAC)
20 MORTGAGE; AND DOES 1 THROUGH 50,) DATE: March 23, 2010
21 inclusive,) TIME: 10:00AM
22) DEPT: 4th Floor
23) Judge: Magistrate Judge Trumbull, Patricia V.
24)
Defendants)
Date Complaint Filed February 5, 2010)
)

25 **NOTICE OF MOTION AND MOTION TO REMAND**

1 PLEASE TAKE NOTICE that on MARCH 23, 2010 at 10:00 a.m., or as soon thereafter
2 as counsel may be heard in Courtroom _____, 4th Floor, of the Northern District Court of
3 California at San Francisco, California before the Honorable Patricia V. Trumbull, Plaintiff,
4 TINA T. TRAN, will, and does, move to remand this action to the Superior Court of California
5 for Santa Clara County. Defendants GMAC MORTGAGE, LLC; and MORTGAGE
6 ELECTRONIC REGISTRATION SYSTEMS, INC.'s removal to this Court was defective. This
7 Court, therefore, lacks jurisdiction to proceed with this action.
8

9 This motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the pleadings and records on file in this action, and any
11 further briefs, evidence, authorities, or argument presented before or at the hearing on this
12 motion. Plaintiff respectfully requests an order remanding this action to the Superior Court of
13 California for Santa Clara County, California.

14
15 Dated: February 16, 2010


16 STEVAN J. HENRIOLLE
17 Attorney for Plaintiff
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23) DEPT: 4th Floor
24)
25 Defendants)
Date Complaint Filed February 5, 2010

NOTICE OF MOTION AND MOTION TO REMAND

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REMAND

I. INTRODUCTION

On February 5, 2010, , and TINA T. TRAN (“the Plaintiff”) commenced this action in the Superior Court for Santa Clara County, California against the above named Defendants. The Complaint included eleven named causes of action, but no enumerated violation of Federal law. Defendants nevertheless, removed this case based upon federal question jurisdiction under 28 U.S.C. section 1441.

II. STANDARD FOR REMOVAL

The propriety of removal turns on whether the case falls within the original jurisdiction of the federal courts. See 28 U.S.C. §§ 1331, 1441(b) (2000). Federal question jurisdiction exists if an action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (2000). Generally, this inquiry is guided by the well-pleaded complaint rule. Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S Cal., 463 U.S. 1, 9-10, 103 S. Ct. 2841, 2846-2847, 77 L. Ed. 2d 420 (1970) (whether a case “arises under” federal law within the meaning of §§ 1441(b) and 1331 “must be determined from what necessarily appears in the plaintiff’s statement of his own claim...”). The plaintiffs are the “master” of their case and, if they can base their claims on both state and federal grounds, their may ignore federal claims, assert only state claims, and defeat removal. Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996) (citation omitted).

The removing party bears the burden of establishing subject matter jurisdiction and of overcoming the “strong presumption” against removal. *Gaus v. Miles, Inc.* 980 F.2d 564, 566 (9th Cir. 1992). A court must construe the removal statute strictly and reject jurisdiction if there

is any doubt regarding whether removal was proper. *Duncan*, 76 F.3d at 1485; *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Because of concerns for federalism and comity, “[t]he bar is further raised when the removal in question is of an action brought originally by a Plaintiff in a State court.” *California v. H&R Block, Inc.*, No. C 06-2058 SC, 2006 WL 2669045, (N.D. Cal. Sept. 18, 2006) (“H&R Block”) (citation omitted).

Because the Complaint contains only claims under state law, Defendants must demonstrate that the claims “necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prod., Inc. v. Darue & Mfg.*, 545 U.S. 308, 313, 125 S. Ct. 2363, 2367, 162 L. Ed. 2d 257 (2005). Defendants cannot meet this burden.

II. ARGUMENT

The action arises exclusively under state law and thus does not allow for federal jurisdiction under 28 U.S.C. § 1331.

Defendants' Notice of Removal fails to set forth any cognizable basis for federal jurisdiction. The claims do not rely on federal statutory violations and Defendants' contention that these claims will necessitate the adjudication of substantial, disputed questions of federal law is spurious. Federal courts routinely reject the argument that state law claims may be removed because they may somehow implicate federal laws, and have remanded those actions to state court. It is also well-settled that a possible defense of compliance with federal law provides no basis for federal question jurisdiction.

1 The Court should remand this state enforcement action to the Superior Court under 28
 2 U.S.C. § 1447 and § 1452(b). Remand is necessary not only to conform to well-established
 3 principles of subject-matter jurisdiction, but also to principles of federalism and comity that
 4 protect state enforcement actions such as this from removal to federal courts.

5 28 U.S.C. 1447(c) provides “If at any time before final judgment it appears that the
 6 District Court lacks subject matter jurisdiction, the case *shall* be remanded.” (emphasis added).
 7 Although a court may retain supplemental jurisdiction over an action with state law claims only,
 8 the Ninth Circuit has held that “[i]n the usual case in which federal law claims are eliminated
 9 before trial, the balance of factors will point toward declining to exercise jurisdiction over the
 10 remaining state law claims.” *Reynolds v. County of San Diego*, 84 F.3d 1162, 1171 (9th Cir.
 11 1996). It is undisputed that this action is in its infancy. Indeed, no discovery has taken place and
 12 Defendants have not filed a responsive pleading. Thus, the Court should decline to exercise
 13 jurisdiction. *Reynolds v. County of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996).

14 Plaintiff TINA T. TRAN is the masters of her complaint and could have alleged federal
 15 causes of action since the federal government regulates mortgage lending. However, Plaintiff
 16 made a “straightforward tactical decision” to choose between federal claims and a state forum.
 17 *Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 490-91 (9th Cir. 1995). The Supreme Court has
 18 unequivocally held that “the plaintiff is the master of the complaint . . . [and] may, by eschewing
 19 claims based on federal law, choose to have the cause heard in state court.” *Caterpillar, Inc. v.*
 20 *Williams*, 482 U.S. 386, 399 (1987). Consequently, this Court should remand this action to
 21 Plaintiffs’ chosen forum – the Superior Court of Santa Clara County, where the action was filed.
 22

23 Plaintiff does indeed note that violations of Federal law occurred during this loan and the
 24 foreclosure proceedings (including “TILA,” “RESPA,” and other “Federal laws”), but she has
 25 patently declined to state causes of action based on those violations. Instead, Plaintiff simply
 mentioned those violations in passing. As a practical matter, most mortgage loans are regulated

1 by federal statutes and regulations that supplement common law and state statutes, so illegal loans
 2 like this one will violate both state law and federal law, and Plaintiff, as “master of the
 3 complaint” may “eschew claims based on federal law.” *Caterpillar, Inc. v. Williams*, 482 U.S. at
 4 399.

5 Prudential reasons favor remand. Judicial efficiency will not be served if this Court
 6 retains jurisdiction. This Court has yet to rule on any of the current issues in this action. The
 7 Superior Court of Santa Clara County is well equipped to decide the state law causes of action at
 8 issue here. Since state Courts routinely address these issues, the Superior Court’s expertise will
 9 lead to judicial efficiency.

10 **The Complaint's State Law Claims Do Not Present a Federal Question.**

11 The claims of Plaintiffs under California's unfair competition laws do not require the
 12 Court to resolve a federal question. Defendants' removal is based on the false premise that
 13 liability under B&P Code section 17200 will turn on whether Defendants violated a federal
 14 statute, specifically TILA or RESPA. Defendant's contention is spurious because it ignores the
 15 well-pleaded complaint rule, as the Complaint contains no reference to TILA or RESPA as
 16 causes of action.

17 Plaintiffs' complaint concerns Defendants' business practices with regard to mortgage
 18 loans. The Complaint identifies several acts or practices that violate California's unfair
 19 competition law, B&P Code section 17200. Any one of those allegations supports liability under
 20 section 17200 and not one contains a reference to any federal statute or regulation, including
 21 TILA or RESPA as the stated cause of action. Plaintiff can show that Defendants violated section
 22 17200 without relying on federal law. Plaintiff can establish her claim under section 17200 by
 23 showing that Defendants' conduct was unlawful, or unfair, or fraudulent, as defined by California
 24 law, and without reliance on federal laws. Thus, Plaintiff's allegation that Defendant's conduct
 25 violates section 17200 supports a claim under the “unlawful” prong of section 17200, while

1 separate allegations support claims under section 17200 that Defendants acted unfairly and
 2 fraudulently. In sum, Plaintiff “need not depend on [a] violation of federal law to bring [their
 3 section 17200] claim. There is no ‘basic’ or ‘pivotal’ federal question that impinges on
 4 [Plaintiff’s] right to relief.” *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1046 (9th
 5 Cir. 2003).

6 Even if the Plaintiff’s state law claims did rely on federal statutory violations, that would
 7 not support removal here they do not. Supreme Court precedent does not permit Defendants to
 8 simply ignore the Complaint. *Grable*, 545 U.S. at 313; *Franchise Tax Bd.*, 463 U.S. at 13.
 9

10 **This Action Must Be Remanded to State Court Because Adjudication of the Plaintiffs’
 11 Claims Does Not Necessarily Involve the Determination of a Substantial, Disputed Question
 12 of Federal Law.**

13 When, as here, federal law does not create the causes of action asserted on the face of the
 14 complaint, “the question is, does a state-law claim necessarily raise a tainted federal issue,
 15 actually disputed and substantial, which a federal forum may entertain without disturbing any
 16 congressionally approved balance of federal and state judicial responsibilities.” *Grable*, 545 U.S.
 17 at 314. The answer to that question here is a resounding, “No.” Not only is federal law not
 18 essential to adjudication of Plaintiff’s claims, but removal would upset the federal-state line
 19 drawn by Congress and strain the federal docket by causing claims ordinarily heard in state
 20 courts to be filed in or transferred to federal court. Remand, therefore, is required.

21 **Federal Law Is Not “Necessary” to Sustain the Causes of Action Under Business &
 22 Professions Code Sections 17200 .**

23 To support removal, Defendants must show that federal law is essential to any theory
 24 upon which Plaintiff’s causes of action could be sustained. *Duncan v. Stuetzle*, 76 F.3d at 1486.
 25 Defendants cannot meet that burden.

1 **Even if the Plaintiff's State Law Claims Somehow Implicate Federal Law,**
 2 **That Does Not Confer Federal Question Jurisdiction.**

4 Defendants may attempt to bolster their removal by selectively quoting partial phrases of
 5 the Complaint, ignoring that these phrases are part of Plaintiff's lengthy description of how
 6 Defendant's compensation system aided and abetted brokers in breaching their fiduciary duties to
 7 borrowers and fueled Defendant's deceptive scheme to mass produce loans for sale on the
 8 secondary market. These contextual, descriptive statements, however, do not create a federal
 9 question. Caggiano v. Pfizer Inc., 384 F. Supp. 2d 689, 690 (S.D.N.Y. 2005); Cont'l Forge v. S.
 10 Cal. Gas. Co., 170 F. Supp. 2d 1052, 1058 (D. Nev. 2001).

11
 12 Moreover, federal courts have routinely rejected Defendants' argument that state unfair
 13 and deceptive acts or practices (UDAP) claims may be removed because they may somehow
 14 implicate federal laws, and have remanded those actions to state court. In Coleman v. Beazer
 15 Homes Corp., No. Civ. 3:07CV312, 2008 WL 1848653, at *4 (W.D.N.C. Apr. 23, 2008), for
 16 example, the court rejected removal jurisdiction based on similar grounds that Defendants assert
 17 here. Defendants in Coleman argued that plaintiffs' state law fraud and UDAP claims would turn
 18 on whether defendants' disclosure of broker compensation and the terms of mortgage loans were
 19 accurate and conformed to TILA and RESPA. The court rejected that contention, holding that
 20 "while the Defendants may be correct that the disclosure requirements of TILA and RESPA may
 21 be implicated by the Plaintiffs' claims, the existence of such federal issues does not confer
 22 federal-question jurisdiction in this case." Smith v. American Int'l Group, Inc., No. 2:05-CV-
 23 1065-MEF, 2006 WL 319180 (M.D. Ala. Feb. 10, 2006) (rejecting removal based on TILA,
 24 where state law claims do not invoke statute); Greer v. Crown Title Corp., 216 F. Supp. 2d 519
 25 (D. Md. 2002) (action did not arise under RESPA despite numerous references to statute; case

1 remanded); *Easterling v. Gulf Guar. Ins. Co.*, 60 F. Supp. 2d 586, 588 (S.D. Miss. 1999) (case
 2 remanded where TILA involved “only in an insubstantial way”).
 3

4 **Alternative and Independent Theories Support Plaintiff’s State Law Claims.**

5 Where alternative and independent theories support a state law claim, federal law is not a
 6 “necessary” component of the claim and the case must be remanded. *Lippitt v. Raymond James*
 7 *Fin. Servs., Inc.* 340 F.3d 1033 (9th Cir. 2003); *Rains v. Criterion Sys.*, 80 F.3d 339 (9th Cir.
 8 1996); *Roskind v. Morgan Stanley Dean Witter & Co.*, 165 F. Supp. 2d 1059, 1067 (N.D. Cal.
 9 2001); *Mangini v. R.J. Reynolds Tobacco Co.*, 793 F. Supp. 925, 927 (N.D. Cal. 1992); *Holliman*
 10 *v. Kaiser Found. Health Plan*, No. C-06-0755 SC, 2006 WL 662430 (N.D. Cal. Mar. 14, 2006).

11 In *Lippitt*, the plaintiff alleged that the defendants’ misleading and deceptive practices
 12 associated with the sale and marketing of callable CDs violated section 17200. 340 F.3d at 1041.
 13 In support of his claim that the defendants’ conduct was unlawful, the plaintiff “describe[d] the
 14 alleged conduct of the defendants in terms that track[ed] almost verbatim ... misdeeds proscribed
 15 by” New York Stock Exchange Rules. *Id.* at 1037. The defendants removed the case and argued
 16 that the plaintiff sought to enforce federal laws, specifically the Securities Exchange Act and
 17 rules promulgated by the New York Stock Exchange. *Id.*

18 The court rejected this argument and concluded that removal was improper because the
 19 plaintiff did not have to rely on federal law to prove his section 17200 claim; rather, he could
 20 establish this claim by alternatively showing that the defendants’ conduct was “unfair” or
 21 “fraudulent,” thereby creating an independent basis for the claim. Accordingly, federal
 22 jurisdiction did not attach. *Id.* at 1043; *see also Bolden v. KB Home*, No. CV08-02682
 23 DDPFFMX, 2008 WL 2899728, *9 (C.D. Cal. Jul. 24, 2008) (section 17200 claim alleging
 24 defendants violated federal real estate appraisal standards incorporated in California’s real estate
 25 law did not create a federal issue; where state claim could be supported by alternative and

1 independent theories federal law is not necessary to claim).

2 Similarly, in *Fardella v. Downey Sav. & Loan Ass'n* No. 00-4393, 2001 WL 492442
 3 (N.D. Cal. May 9, 2001), plaintiffs alleged that payment of a broker's rebate out of real estate
 4 loan proceeds as payment for securing the loan at an "above par" interest rate violated B&P
 5 Code sections 17200 and other state laws. Defendants removed the action, asserting that the state
 6 law claims depended on RESPA and TILA because a single paragraph in the complaint alleged
 7 that the broker's rebate violated both state and federal laws. The court granted plaintiffs' motion
 8 for remand, finding that federal law was not necessary to plaintiffs' right to relief because they
 9 could prevail by showing either that the rebate violated RESPA or TILA or California law. Even
 10 if the Plaintiffs' claim that a rebate was unlawful rested solely on establishing a federal violation,
 11 federal question jurisdiction was still absent because Plaintiffs could show that the rebate was an
 12 unfair, rather than unlawful, business practice. *Id.*

13 In *H&R Block, Inc.*, the court held that the allegation that Block violated TILA was not
 14 an essential part of the section 17200 claim because the State could prevail by proving any one
 15 of eight predicate violations. 2006 WL 2669045, at *4. Numerous courts have reached the same
 16 result and remanded UDAP claims for lack of federal question jurisdiction.¹

17 **Defendants Cannot Establish Federal Question Jurisdiction by Relying on Federal
 18 Law as a Defense.**

19 Defendants may argue that removal is appropriate because a number of California
 20 statutes incorporate federal law standards. Cal. Civ. Code § 2958, Cal. Fin. Code § 50308, and

22 ¹ See, e.g., *New York v. Dell, Inc.*, 514 F. Supp. 2d 397, 400 (N.D.N.Y. 2007) (remand where federal
 23 claims were alternate theories for the state law claims); *Rubin v. MasterCard Int'l.*, 342 F. Supp. 2d 217
 24 (S.D.N.Y. 2004) (failure to make adequate disclosures actionable under the Florida statute irrespective of
 whether plaintiff invokes federal law; remand ordered); *Howery v. Allstate Ins. Co.*, 243 F.3d 912 (5th Cir.
 25 2001) (remand where federal law violation not an essential element of the state law claim); *Cavette v.
*Mastercard Int'l Inc.**, 282 F. Supp. 2d 813, 819 (W.D. Tenn. 2003) (state failure-to-disclose claim did not
 involve "substantial" or "necessary" interpretation of TILA).

1 Cal. B&P Code § 10240). None of these statutes are pleaded in the Complaint. But even if they
 2 were, that still would not provide grounds for removal. Removal cannot be predicated on the
 3 presence of federal law as a defense. Franchise Tax Bd., 463 U.S. at 14 (“since 1887 it has been
 4 settled law that a case may not be removed to federal court on the basis of a federal defense,
 5 including the defense of preemption, even if the defense is anticipated in the plaintiffs
 6 complaint”). *See also Fardella*, 2001 WL 492442, at *3

7 Finally, Defendants may attempt to rely on California ex rel. Lockyer v. Dynergy, Inc.,
 8 375 F.3d 831, 841 (9th Cir. 2004), to support the proposition that federal question jurisdiction is
 9 proper where a state lawsuit turns upon Defendant's compliance with a federal regulation. That
 10 case is inapposite here because, the statute at issue in *Dynergy* provided for exclusive federal
 11 court jurisdiction, but TILA and RESPA do not. *See Wertz v. Wash. Mutual Bank*, No. 2:08-CV-
 12 317-GEB-KJM, 2008 WL 1882843 (E.D. Cal. Apr. 24, 2008) (distinguishing *Dynergy* as
 13 involving a statute providing for exclusive federal court jurisdiction).

14

15 **If This Court Determines That It Has Jurisdiction Under 28 U.S.C. § 1334, It Should
 16 Remand the State Court Action Under 28 U.S.C. § 1452(b).**

17

18 This Court may remand Plaintiff's action on any equitable grounds. 28 U.S.C. § 1452(b).
 19 In order to determine whether equitable remand is appropriate, courts consider the same factors
 20 used to determine whether permissive abstention is appropriate under 28 U.S.C. § 1334(c)(2).
 21 *See Schulman v. Cal. State Water Resources Control Bd.*, 200 B.R. 358, 372-73, 374 (Bankr.
 22 C.D. Cal. 1996) (identifying 11 factors), reversed on other grounds, 237 F.3d 967 (9th Cir.
 23 2001). Courts may also consider “judicial economy; comity and respect for state court decision-
 24 making capabilities;... and the prejudice to other parties to the action.” W. Helicopters, Inc. v.
 25 Hiller Aviation, Inc., 97 B.R. 1, 6 (Bankr. E.D. Cal. 1988).

1 The majority of these factors favor remanding Plaintiff's action to state court. Plaintiff's
 2 action is not a "core" proceeding, as it does not arise under title 11, nor does it arise in or relate
 3 to any case under title 11, as described in Section IV.D.2. above. Plaintiff's causes of action are
 4 based entirely on state law. Thus, remanding this action to state court will not in any way
 5 prejudice the Defendants.

6 The interests of comity also favor remand, as the state court is fully capable of deciding
 7 state law issues and is in the best position to decide the complex issues raised in the Plaintiff's
 8 action. From the standpoint of judicial economy, removal to federal court will not conserve
 9 judicial resources, as there is no pending bankruptcy case or other action to which Plaintiff's
 10 action is related. Finally, this Court has no jurisdiction over the Plaintiff's claims, as set forth
 11 above.

12

13 **The Federal Government's Interest in Providing a Forum for TILA and RESPA Disputes**
 14 **Is Not Sufficiently Substantial to Justify Removal, and Allowing Removal Would**
 15 **Effectively Federalize a Large Number of Garden-Variety, State Law Claims, Which Is**
 16 **Contrary to *Grable*.**

17

18 Even if federal law were "necessary" to Plaintiff's claims in this case - which it is not -
 19 removal still would be improper under *Grable* because there is no substantial federal issue in
 20 dispute. Removal requires a "substantial" federal issue, indicating a "serious federal interest in
 21 claiming the advantages thought to be inherent in a federal forum." *Grable*, 545 U.S. at 313; see
 22 also *Merrell Dow*, 478 U.S. at 812, 814 n.12. Congressional determination not to preempt state
 23 law remedies weighs strongly against removal, particularly where allowing removal would
 24 herald a shift into the federal court cases ordinarily heard in state court. *Grable*, 545 U.S. at 316-
 25 317.

1 TILA applies to the written disclosures that creditors provide to borrowers and sets
 2 parameters for how credit terms such as finance charges and annual percentage rates are
 3 presented in those written disclosures. 15 U.S.C. §§ 1631,1632,1635, 1638 (2006). TILA
 4 includes an explicit preservation of a state's right to enforce disclosure requirements, indicating
 5 that Congress did not deem it important for federal courts to decide all cases that might raise
 6 TILA issues. *See 15 U.S.C. § 1610* (2006) ("Except as provided in subsection (e) ..., parts B and
 7 C of this subchapter do not annul, alter, or affect, the laws of any State relating to the disclosure
 8 of information in connection with credit transactions, except to the extent that those laws are
 9 inconsistent with the provisions of this subchapter and then only to the extent of the
 10 inconsistency."). Thus, TILA does not "govern[] the disclosure of the terms under which interest
 11 rates adjust, the possibility of negative amortization, and credit advertising generally" to the
 12 exclusion of all other laws, as Defendants may suggest.

13 In *Evans v. Courtesy Chevrolet II*, 423 F. Supp. 2d 669 (S.D. Tex. 2006), plaintiff sued
 14 under a Texas statute that made TILA's disclosure requirements under 15 U.S.C. §§ 1601-1666j
 15 and Regulation Z applicable to all retail installment transactions. The court remanded the action
 16 based on TILA's savings clause and also because "[a]llowing federal jurisdiction in all cases
 17 arising out of disputes over disclosures in installment contracts for purchasing cars ... portends a
 18 significant transfer of judicial responsibilities from state to federal courts." *Id.*

19
 20 Allowing federal jurisdiction in cases brought under California's unfair competition and
 21 false advertising laws that do not rely on TILA or RESPA on the grounds that those federal
 22 statutes are somehow implicated would significantly redraw the line between state and federal
 23 authority. *Grable*, 545 U.S. at 514 (courts must be careful to avoid "upsetting the state-federal
 24 line drawn (or at least assumed) by Congress"). Further, numerous California statutes either
 25

1 require compliance with or reference TILA² or RESPA.³ Allowing federal jurisdiction in all
 2 cases arising under these statutes would federalize a large number of garden-variety state law
 3 claims. Such a transfer of responsibility is neither appropriate nor necessary as California courts
 4 frequently adjudicate claims, both state and federal, that implicate TILA and RESPA.⁴

5 **Plaintiff's Entitlement to and Request for Attorneys' Fees and Costs**

6 Plaintiff has incurred attorneys' fees and costs in conjunction with the preparation of this
 7 Motion for Remand and related matters and issues. 28 U.S.C. §1447(c), as amended in 1998,
 8 provides in relevant part that “[a]n order remanding the case may require payment of just costs
 9 and any actual expenses, including attorney fees, incurred result of the removal.” The intent of
 10 the statute is to reimburse a party, Plaintiff, who has incurred expenses in attacking an
 11 insufficient removal. Plaintiff seeks an award of \$10,000.00 as attorneys' fees and costs for the
 12 improper removal of this action to the United States District Court.

14

15

16² See, e.g., Cal. B&P Code §§ 7163 (home improvement contracts), 7165 (swimming pool contracts),
 17 22251 (tax refund anticipation loans); and Cal. Civ. Code §§ 1632 (foreign language contracts),
 18 1747(credit cards), 1799.203 (consumer contracts), 1801 (retail installment sales), 1808.8 (add-on sales),
 2981 (automobile sales financing), and 2985.7(vehicle leasing).

19³ See, e.g., Cal. B&P Code § 10240 (real estate loans); Cal. Civ. Code § 2954.1 (accounts maintained for
 20 property-related payments); and Cal. Fin. Code §§ 4052 (financial privacy), 17425 (making violation of
 21 RESPA a violation of Cal. escrow regulations), 50505 (making violation of RESPA a violation of Cal.
 22 Residential Mortgage Lending Act).

23⁴ Pac. Shore Funding v. Lozo, 138 Cal. App. 4th 1342, 42 Cal. Rptr. 3d 283 (2006); Johnson v. Capital
 24 One Bank, 120 Cal. App. 4th 942, 15 Cal. Rptr. 3d 917 (2004); Weber v. Langholz, 39 Cal. App. 4th 1578,
 25 46 Cal. Rptr. 2d 677 (1995); King v. Central Bank, 18 Cal. 3d 840, 135 Cal. Rptr. 771 (1977). ., McKell v.
Wash. Mutual, 142 Cal. App. 4th 1457, 49 Cal. Rptr. 3d 227 (2006) (holding that section 17200 claim based
 26 on violation of RESPA); Wanger v. EMC Mortgage Corp., 103 Cal. App. 4th 1125, 127 Cal. Rptr. 2d 685
 27 (2002) (determining whether notice of transfer requirements violated); Wash. Mutual Bank v. Super. Ct.,
 28 75 Cal. App. 4th 773, 89 Cal. Rptr. 2d 560 (1999) (holding state law claims based on RESPA violations not
 29 expressly preempted by federal law).

1 **CONCLUSION**
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3
4

For the foregoing reasons, Plaintiff respectfully requests that this Court remand this
action to the Superior Court of California in Santa Clara County.

5 Dated: February 16, 2010.
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Stevan Henrioule, Esq.
Attorney for Plaintiff

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